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ABSTRACT

Identifying the purpose of the Conference on Real Choices in Indian Resource Development: Alternatives to Leasing (Billings, Montana, January 1975) as exploring options available to American Indian tribes in the Great Plains re: the development of their own natural resources, this paper presents excerpts from participant speeches and comments regarding the following: (1) the problem and the challenge of conserving and developing Indian resources; (2) the foreign analogy wherein use of Indian resources is compared with the developing countries and their attempts to control and manage resources; (3) comparative mining agreements ("The Indian mineral leases I have seen are among the worst mineral agreements in the world."); (4) water rights (discussion of a new bill proposed by the Justice Department to allow the Secretary of the Interior over a five year period to administer the quantification of water in the U.S. without a mechanism for appeal); (5) a colonial experience (a professor from Ceylon asserts, "The necessity to assert cultural autonomy is critical at the initial stages...because it is going to take us forward into a new sense of human community."); (6) Environmental Protection Agency (it was the consensus that EPA and Indian people have common interests and should develop better communications). (JC)

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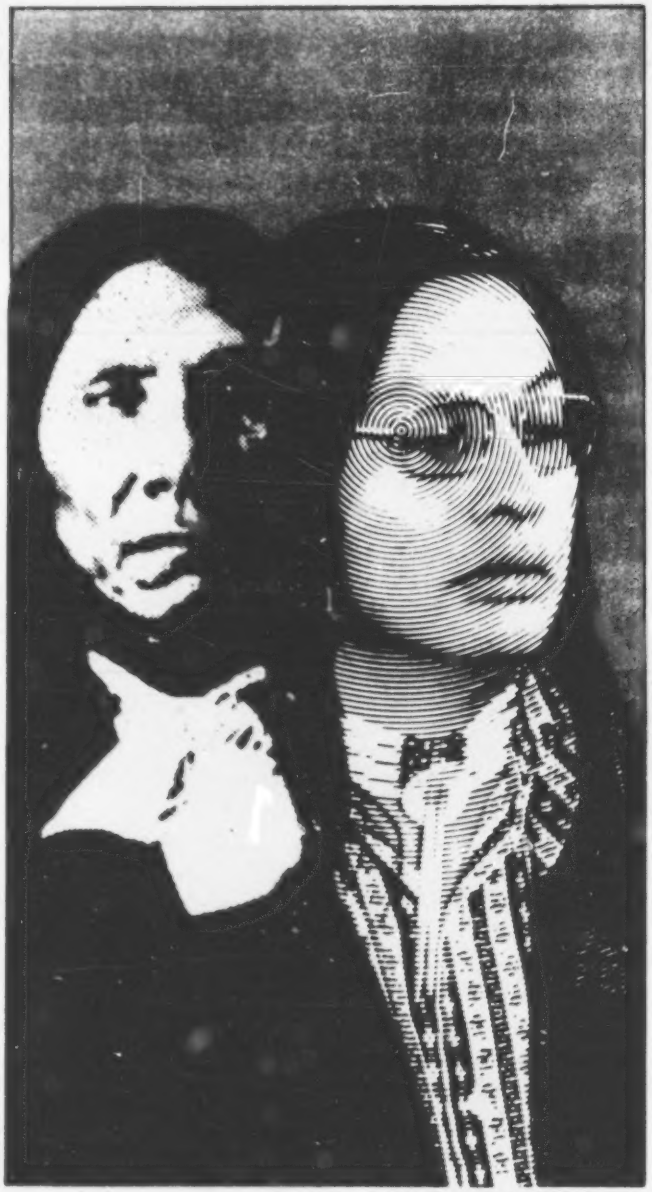

Americans for Indian Opportunity AIO

Report
BILLINGS CONFERENCE
JANUARY 1975

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BILLINGS CONFERENCE

REAL CHOICES IN INDIAN RESOURCE DEVELOPMENT*

ALTERNATIVES TO LEASING

1. Problem and Challenge. The purpose of the Conference on Real Choices in Indian Resources Development-Alternatives to Leasing, attended by tribal representatives from the Native American Natural Resources Development Federation of the Great Plains, was to focus on the options available to Indian tribes in the Great Plains in regard to the development of their own natural resources.

In her opening remarks to the earlier National Conference held in Reston, Virginia, LaDonna Harris, President of Americans for Indian Opportunity had stated: "A great many American Indian tribes own extremely valuable natural resources -- land, water, timber, and minerals. The trouble is that government policy has encouraged the use and development of these resources by non-Indians, and has simultaneously encouraged tribal members to move to the cities for outside employment. The result is that our reservations have the highest unemployment and the lowest family income of any ethnic group of Americans."

"Native Americans can realize more from their resources than just a lease payment," she continued. "They can also choose development alternatives which avoid the presently threatened destruction of their cultures and environment. That's why we are here. The challenge before us is to discuss and decide how Indian tribes can conserve and develop their own resources at their own pace and in a manner which is economically, culturally, and environmentally sound."

Opening the Billings Conference, Ms. Harris outlined the particular problems and challenges facing the Indian tribes of the Great Plains. "As we listen to the problems that we are going to be confronted with the next two years in the development of your natural resources, it is becoming clear that without some action in the coming months, Native Americans may again lose a great deal of their natural resources, and our cultural identity may be seriously threatened as well," she said.

Dennis Limberhand, a tribal councilman from the Northern Cheyenne tribe, summed up the purpose of the meeting, assembled on a cold weekend in Montana, saying: "I know as a tribal councilman what's expected of councilmen; they often make a million dollar decision without the necessary expertise. And I think that with consulting the right people and doing things on our own, with information that tells both sides of the story, not just one side, we can benefit from the development of our resources."

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*This conference, which was held in Billings, Montana on January 30, 31 and February 1, 1975, was co-sponsored by Americans for Indian Opportunity, the Northern Cheyenne tribe and Eastern Montana College. The Billings Conference was preceeded by a National Conference on Indian Resources Development, held in Reston, Virginia on September 16, 17 and 18, 1974. The Billings Conference was the first of four regional conferences designed to focus more specifically on regional problems concerning natural resources development.

2. Foreign Analogy. It was brought out that certain similarities exist between the situation of emerging nations in regard to natural resources, and that of American Indian tribes. By studying what emerging nations have done, the Billings conferees were told that Indian tribes can gain a better understanding of what options exist and what tribes can demand and receive from investment and mining corporations.

Guy Erb from the Overseas Development Council outlined new resource development arrangements that are being adopted by American companies and emerging nations.

"An important thing to note is that almost all developing countries now are instituting new and more rigorous policies regarding the use of their resources and the use of their markets and the use of their economies by foreign companies," Mr. Erb said. He indicated that the new requirements by the emerging nations have not stymied development, stating: "We know that, in spite of very detailed and extremely specific guidelines and regulations, American firms and European firms are falling over one another to do business in Eastern Europe and Communist countries."

Mr. Erb stated that the rapid change in contract arrangements between U.S. and European corporations and African and South American countries can be attributed to the growing sophistication of these developing nations. He further stated that they hired or trained expertise in economics, negotiations, and mineral development technology and, consequently, they are demanding more, much more, in return for the right to extract their natural resources. The growing shortages of energy, water, and food have also enhanced their bargaining position with western corporations, he added. "Developing nations want ownership and management and control. I'm sure that you can recognize these goals. They're your goals, too, in many cases, so what they can do affects definitely what you can do," Mr. Erb concluded.

3. Comparative Mining Agreements. Charles Lipton, an international lawyer who has negotiated mining agreements for a number of developing countries, opened his remarks by saying: "I have advised governments in negotiating mineral agreements and I know how they do it. I have been asked to be here today in order to tell you how they do it. And I am also going to tell you that the mineral leases that you now have, to put it mildly and not to understate the case, are miserable. The Indian mineral leases I have seen are among the worst mineral agreements in the world."

Mr. Lipton emphasized that whatever the form of a mineral agreement, fundamentally, it is a sales contract whereby the minerals in the ground are sold to a mining company. He said that "the basic questions when you sell anything are: what price are you going to ask for and what price will you accept."

He stated his view that the form of Indian coal leases, which provide for a fixed number of cents royalty per ton of coal, could not be considered fair and reasonable. The value of coal is bound to increase during the energy shortage, and the value of the dollar to decrease due to inflation. He said "that kind of royalty has no relationship to value, let alone profitability, and that kind of royalty has not been seen in international mineral agreements since the end of the colonial era." He called Indian mineral leases "colonial style mineral leases in that the minerals are obtained cheaply and the profits made and the taxes paid elsewhere." He reported that the very companies that have leases with Indian tribes have given better deals to foreign governments.

Mr. Lipton went on to say that developing countries (who legally own the minerals since private mineral ownership is not allowed in such countries) are now interested in much more than the financial return from their mineral resources, they want to "control the basic decisions which determine not only revenue but how the mineral resources are going to be developed." And they are concerned with the "multiplier effect" of development - the extent to which new jobs, infrastructure and new businesses are created by mining projects.

Foreign countries use mining projects in order to bring about their own development. The projects bring necessary infrastructure, such as roads, railways, power lines, dams, housing and medical facilities. The countries also ensured that local people were trained and given preference in hiring and promotion. Mr. Lipton pointed out that mining operating companies are now usually required not just to give such preferences but to comply with a schedule of job "localization" in which the employment of outsiders would be phased out. To meet this schedule, operating companies are required to conduct training programs both on the job and outside.

Mr. Lipton said developing countries are now insisting that minerals be processed and by-products be produced to the extent economically feasible as part of the mining project. This creates more jobs and more revenues at home. Otherwise, the jobs and revenues would benefit not the owners of the minerals, but the people who bought the minerals.

With respect to the control of mineral development, Mr. Lipton stated that foreign governments now specify the method of mining operation, the rate of operation, the plant capacity, establish air and water quality standards and specify restoration obligations and the timetable for such restoration. Governments frequently insist on approving long-term sales contracts and are very sensitive about dealings between operating companies and other companies with which they are affiliated.

In response to questions about the impact that outsiders have on local people in mining projects, Mr. Lipton said that governments typically specify the terms under which foreigners are permitted to work. They decide how long they can stay and even, in some cases, how much they are going to be paid and what kind of houses they are going to live in. In essence, the governments of developing countries are now taking control of mining projects and they are no longer willing to give mining companies complete freedom to make the basic decisions which determine how minerals and land are going to be used.

In discussing financial arrangements, Mr. Lipton said that mineral agreements have taken a 180 degree turn since World War II. No longer will any developing country accept a fixed royalty of a few cents per ton as its share of the revenues from a mineral project. Royalties are usually a percentage of the value of the mineral mined. Increasingly, through joint venture agreements, developing countries are keeping a major share of the profits as shareholders in the mining operating company as well as taxing profits. Some developing countries have now decided to go into mining projects themselves and hire mining companies under service contracts to mine and market the minerals on a fixed fee basis, thus retaining complete ownership, complete control and 100% of the profits. Others hire mining companies to be managers, paying them a percentage of the profits.

Mr. Lipton said that in some recent agreements in developing countries, only exploration rights are granted and if a discovery is made and a mining project is economically feasible, then a mining agreement is negotiated. The company carrying out the exploration is given a right of first refusal or an exclusive right for a fixed period to negotiate mining agreements. Why such an arrangement can be beneficial to a tribe can be seen in the following.

Mr. Lipton: "the developing countries said we want to know what is there and what its value is before we make a deal. They ask the mining companies to show them the feasibility reports, how the minerals are going to be mined and what the projected costs are, how and where the minerals are going to be sold and what the expected prices are, where the money to finance the project is going to come from and how much it's going to cost, and what the expected profits will be. Only then, say these developing countries, can they decide what they want as a fair share. Until they know those things, they say that they cannot tell what a fair share might be."

Knowing the projected costs and revenues in advance of negotiations would enable the tribes to bargain on a more equal basis with mining and investment firms. Only if it is known what other agreements these companies have negotiated around the world, what terms they have accepted elsewhere and what plans they have to mine, conserve and restore the land, can it be determined what Indian people should ask for and what Indian tribes should accept.

Mr. Lipton stressed that it is up to the tribes to decide what they want, and how they are going to get it. Adequate information, proper and disinterested advice and tribal unity are vital to ensure maximum control and maximum benefits for the tribe.

Throughout Mr. Lipton's talk the question of tribal sovereignty was continually brought up. Some participants felt that the Indian tribes could not take these initiatives, that the Interior Department and the BIA would not let them make these decisions and would not approve contracts negotiated by the tribes. Some felt the tribes who have already signed leases could do little to make a better deal. Mr. Lipton addressed this issue in saying: "The question is; do you own the minerals? If you do own the minerals then you should decide how you want them mined and on what terms. All other mineral owners do."

Mr. Lipton continued, "the reason that other people have obtained more for their minerals is because they have insisted on better deals. It makes no difference whether they are individual mineral owners, governments or tribes." Mr. Lipton emphasized that developing countries renegotiate where conditions have changed and where expectations have not been realized.

In answer to the question of old leases, LaDonna Harris remarked, "Africans are getting better deals from U.S. mining companies than our government, our trustee, has advised and allowed us to get here in the U.S. That kind of information is a very strong weapon. And that is why information is a very strong weapon. And that is why information is power; that is why the kind of information we are exchanging here is a powerful thing."

It was Mr. Lipton's opinion that these inequitable and archaic leases took advantage of the tribes. There was no equality in bargaining and the tribes were not properly advised. He said that mining companies are not interested in long protracted court suits and they do not want to appear to the public to have overreached and taken unfair advantage of the tribes. The Indians do have a bargaining position in regard to the already existing leases. The mining companies would not want to be publicly embarrassed by a comparison of their agreements elsewhere with their agreements with the tribes.

Implicit in this whole process, be it negotiation, renegotiation or an attempt to have the old leases declared void, is the need for a strong and unified tribal structure. The conditions brought out during the conference will not be easily overcome. That will take information, experience, toughness and an ability to negotiate know-how, and that will take not only time but a unified effort by the tribes.

4. Water Rights. George Crossland, an attorney to the Bureau of Indian Affairs in Washington, D.C., described to the conference participants a pattern of threatening legal developments in regard to water rights. He said that the Winter's Doctrine of 1908, a reserved rights doctrine, held that Indian reservations are entitled to water for present and future needs, but that in more recent years, the Justice Department, by its actions and arguments, seems more concerned and responsive to the political and economic influences, and not that concerned about protecting the reserved water rights of the Indian people.

Mr. Crossland outlined a new bill, proposed by the Justice Department, to allow the Secretary of the Interior over a five year period to administer the quantification of water in the United States without hearings to allow for Indian tribes to argue their position, and without a mechanism for appeal.

Mr. Crossland said that he fears that during this 5-year process, the federal government might allocate water for coal development and processing in the coal areas of the Great Plains. "At present, the Justice Bill has not been sponsored in Congress, but when it does begin moving through the legislative machinery, Indian tribes should be prepared to act immediately to preserve their rights to water to meet the present and future needs," Crossland said.

5. A Colonial Experience. Archibald Singham, a Professor of Political Science at Howard University, spoke of colonial exploitation in his home country of Ceylon, which, at an early time, fell victim to the Western World's search for cheap resources and cheap labor. Mr. Singham spoke strongly against imperialism in the form of economic exploitation, concluding with the statement: "The necessity to assert cultural autonomy is critical at the initial stages, not because it is going to take us back, but because it is going to take us forward into a new sense of a human community."

6. Environmental Protection Agency. Richard Denney, from the Washington, D.C. office, and John Hardaway, representing the Denver office, of the Environmental Protection Agency, attended the Billings conference to discuss the EPA, its relationship with and impact on Indian people. They stated that EPA was established in 1970 to monitor and enforce air and water quality, to regulate the use of dangerous pesticides and to control noise and radiation pollution. Furthermore, they indicated that the agency is very sensitive to pollution problems and supports orderly industrial development, with close attention to the quality of life issue.

It was the consensus of the conference participants that EPA and Indian people have common interests and that, consequently, Indian tribes and EPA should develop better communications and a closer working relationship. It was pointed out that through the efforts of Americans for Indian Opportunity and the Institute for the Development of Indian Law, EPA is becoming more sensitive to the needs of the Indian community and to the issues of tribal sovereignty and jurisdiction. EPA is including a provision in its new regulations whereby Indian tribes can promulgate and administer pollution standards on tribal lands provided they are not under state jurisdiction pursuant to Public Law 280; tribes will be able to control pollution, allowing only what is acceptable to the people. Conferees felt that tribes should be involved in writing these regulations, and in devising

plans for implementing them. And conferees were interested in Mr. Denney's statement that tribes may be eligible for grants and training monies for the setting up of monitoring and enforcement projects on tribal lands.

7. Conclusion. Conferees felt that tribal land is sometimes more valuable in an undisturbed state, but where resources are to be developed, tribes need no longer settle for a low-level lease payment. Following the formal sessions, participants met individually with conference speakers and consultants in private sessions. Participants felt they had gained a new awareness of alternatives available to tribes and told of their plans to take the information they had gained at the conference back to their respective tribes. Many participants felt there was great need for more detailed follow-up sessions with individual tribal councils.

In addition, considerable feeling was expressed that the BIA needs to furnish improved technical assistance and advocacy for tribes in regard to natural resources development.

Although the principal purpose of the Billings Conference was to increase tribal awareness of options available to Indian tribes in regard to development of their own resources, there was also impact on the government side, too.

AIO followed up the conference with meetings with officials of BIA, EPA, and other government agencies. Officials are, as individuals, more aware now of the real questions involved. For example, Anson A. Baker, Superintendent of the BIA's Fort Berthold Agency, in a letter to LaDonna Harris on March 10, 1975, wrote in part, the following:

> It is my opinion that the conference you conducted in Billings, Montana, was very beneficial to those people attending. It is also my firm belief that we need to continue seminars of this nature so that tribes and Bureau Officials can be more informed on natural resources.
>
> I have found that we in the Bureau have very limited information and technical expertise available to us. Therefore, we are very limited in providing the tribes in the handling of their oil, gas, coal and water resources the full market value of these resources. As tribes become more knowledgeable as to the fair market value of their resources they will then be in a better position to make the right decisions. I would hope that your organization will pursue these areas.
>
> An area that we need much information in is the area of reclamation on strip mining. Another area for many of our tribes in the Northwest here, and this is from experience, is the need to develop adequate ordinances in the areas of land use, recreation, industrialization and environmental.